

BOARD OF MANAGERS

For

Chevy Chase Village, MD

Subject: AN ORDINANCE TO AMEND CHAPTER 17 OF THE VILLAGE CODE TO EXPAND THE CIRCUMSTANCES IN WHICH A TREE MAY BE REMOVED, DESTROYED OR ITS HEALTH SUBSTANTIALLY IMPAIRED UPON AUTHORIZATION OF THE VILLAGE MANAGER AND TO ESTABLISH AN ALTERNATE PROCEDURE FOR OBTAINING APPROVAL FROM THE BOARD OF MANAGERS TO REMOVE, DESTROY OR SUBSTANTIALLY IMPAIR THE HEALTH OF A TREE ON PRIVATE PROPERTY PROTECTED BY CHAPTER 17 OF THE VILLAGE CODE

WHEREAS, it is in the best interests of Chevy Chase Village to protect, preserve and promote its urban forest; and

WHEREAS, the urban forest of Chevy Chase Village is part of a larger ecosystem which contributes significantly to the quality of air, noise abatement and screening between residential, commercial and recreational development; and

WHEREAS, the existence of trees on both private and public property in Chevy Chase Village helps to moderate temperature variations with the Village and promotes energy conservation; and

WHEREAS, the urban forest of Chevy Chase Village is part of

the watershed of Little Falls Creek and therefore affects water runoff, and replenishes the water table and watershed systems; and

WHEREAS, the urban forest of Chevy Chase Village has a significant aesthetic value affecting property values and the quality of life in the Village and surrounding communities; and

WHEREAS, the General Assembly of Maryland has declared that forests and trees are an important and necessary part of the urban and community environment, and that the retention, enhancement and management of these forests and trees by local government is in the best interests of the citizens of the State of Maryland; and

WHEREAS, the Board of Managers found that the regulation of trees in the Village would protect and preserve the Village's rights, property and privileges; preserve peace and good order; secure persons and property from danger and destruction; and is necessary for the health, safety and welfare of Chevy Chase Village as well as to protect the health, comfort and convenience of Village residents; and

WHEREAS, on April 18, 1988, the Board of Managers of Chevy Chase Village adopted an ordinance to create Chapter 17 of the Chevy Chase Village Code, entitled "Urban Forest" to regulate the planting, trimming, removal and destruction of trees within Chevy Chase Village; and

WHEREAS, Chapter 17, Section 17-7 requires that a permit

must be obtained from the Village Manager to remove, destroy or substantially impair the health or growth of a tree on private property if the tree's trunk measures twenty-four (24) inches in circumference at four and one-half (4 1/2) feet above ground level; and

WHEREAS, the Village Manager is authorized to issue a permit to remove, destroy or substantially impair the health or growth of a tree only if one (1) of the following conditions applies: (1) the tree is diseased beyond restoration, insect infested beyond restoration, or injured beyond restoration; (2) the tree is dead or dying, or is in danger of falling; (3) the tree constitutes a hazard to the safety of persons; (4) the tree constitutes a hazard and threatens injury to property; (5) the tree constitutes a hazard and threatens injury to, or would have a negative effect on the health of other trees; or (6) the tree is injurious to or creates a condition injurious to the health of a person, certified to by a qualified medical practitioner; and

WHEREAS, if none of the foregoing conditions for the Village Manager to issue a permit exist and the Village Manager denies a permit, an applicant may appeal the denial to the Board of Managers; and

WHEREAS, an appeal to the Board of Managers involves an application fee, notice to the public, a public hearing, deliberations by the Board, findings by the Board with respect to eight (8) criteria set forth in Section 17-6 and a written

decision discussing the findings of fact and conclusions of law;
and

WHEREAS, the foregoing process requires an appeal fee and participation in a public hearing at a Board of Managers' meeting by the applicant and/or the applicant's agent and the expenditure of time by Village staff and the Board of Managers in preparation for and at a formal public hearing as well as the expense of preparation and/or review of a written decision by Village Counsel; and

WHEREAS, the Village Tree Committee Chair has reviewed recent Board tree removal decisions and found that: (1) almost all appeals are resolved in favor of the applicant based on a commitment by the applicant to reforestation; (2) there have been no appeals of the Board's decisions to a court of competent jurisdiction in recent years; (3) consequently, the lengthy decisions prepared by counsel, which would be useful if the Board denied appeals regularly and they were contested in court, probably have limited value and raise a question of whether the Village would be better served by a procedure that reduces legal costs and frees up monetary resources to purchase additional trees for the Village or to spend on other important Village matters; and

WHEREAS, the Village Tree Committee Chair's review of appeals revealed that routinely the Board of Managers has found that the preservation of trees of certain species is not

particularly desirable; and . . .

WHEREAS, the Village Tree Committee Chair has recommended that the Board of Managers establish and appoint a three-person Tree Ordinance Board ("TOB") which would endeavor, within twenty (20) business days after a permit is denied by the Village Manager and an applicant indicates a desire for further consideration, to work out with the applicant a reforestation plan that would allow the applicant to remove the tree and preserve the Village's long-term tree canopy taking into account the factors set forth in Section 17-6 and in seeking to reach a resolution, the TOB would solicit the views of adjoining and confronting residents and the Village arborist; and

WHEREAS, the Village Tree Committee Chair further proposed that: (1) if a resolution satisfactory to the applicant and the TOB is negotiated, it would be incorporated into a standard form consent agreement (to be prepared with the assistance of Village Counsel); (2) the consent agreement would be signed by the applicant and would (a) require the applicant to plant one or more reforestation trees (preferably on the applicant's property but if that was not feasible on Village property), (b) contain a provision providing for a monetary penalty in the event that applicant does not plant the reforestation tree(s) as agreed within a defined period, (c) provide that the agreement could, at the Village's discretion, be recorded by the Village in the County Land Records (with the applicant paying a fee to cover the

costs of recording), and (d) include a provision whereby the applicant would specifically acknowledge that the agreement (including specific enforcement of the applicant's undertaking to plant reforestation tree(s)) is enforceable by consent in a Maryland Court of competent jurisdiction; (3) no appeal fee would be paid by the applicant; and (4) the proposed consent agreement would be presented to the Board of Managers for approval on a consent agenda if the Board of Managers concurs with the resolution, obviating the need for a formal public hearing before the full Board of Managers; and

WHEREAS, the Village Tree Committee Chair estimated that, based on the historical record on tree removal appeals, the vast majority of appeals could be resolved in the manner proposed by the Village Tree Committee Chair resulting in substantial savings; and

WHEREAS, the Village Tree Committee Chair proposed that if the applicant and the TOB do not reach agreement, the applicant could appeal the permit denial following the procedure as set forth in the Village Code; and

WHEREAS, the Village Board of Managers introduced the following ordinance on January 9, 2012 and considered the following ordinance in open session on February 13, 2012; and

WHEREAS, the Board finds that the assertions of the Village Tree Committee Chair are accurate and that the adoption of the following ordinance will assure the good government of the

Village; protect and preserve the Village's rights, property and privileges; preserve peace and good order; secure persons and property from danger and destruction; and is necessary for the health, safety and welfare of Chevy Chase Village as well as to protect the health, comfort and convenience of Village residents.

NOW, THEREFORE, the Board of Managers of Chevy Chase Village does hereby adopt the following ordinance:

AN ORDINANCE ENTITLED:

AN ORDINANCE TO AMEND CHAPTER 17 OF THE VILLAGE CODE TO EXPAND THE CIRCUMSTANCES IN WHICH A TREE MAY BE REMOVED, DESTROYED OR ITS HEALTH SUBSTANTIALLY IMPAIRED UPON AUTHORIZATION OF THE VILLAGE MANAGER AND TO ESTABLISH AN ALTERNATE PROCEDURE FOR OBTAINING APPROVAL FROM THE BOARD OF MANAGERS TO REMOVE, DESTROY OR SUBSTANTIALLY IMPAIR THE HEALTH OF A TREE ON PRIVATE PROPERTY PROTECTED BY CHAPTER 17 OF THE VILLAGE CODE

BE IT ORDAINED AND ORDERED, this _____ day of _____, 2012, by the Board of Managers of Chevy Chase Village, Montgomery County, Maryland, acting under and by virtue of the authority given it by the act of Legislature approved March 28, 1951, and Acts subsequent thereto, Article 23A of the Maryland Code, the Chevy Chase Village Charter, and Natural Resources Article, Title 5, Subtitle 4, Part IV, that Sections 17-3 and 17-5 be amended to read as follows:

Sec. 17-3. Permit Standards.

(a) The Village Manager is authorized to issue a permit only if one (1) of the following conditions applies:

(1) The tree is diseased beyond restoration, insect infested beyond restoration, or injured beyond restoration;

(2) The tree is dead or dying, or is in danger of falling;

(3) The tree constitutes a hazard to the safety of persons;

(4) The tree constitutes a hazard and threatens injury to property;

(5) The tree constitutes a hazard and threatens injury to, or would have a negative effect on the health of other trees;

(6) The tree is injurious to or creates a condition injurious to the health of a person, certified to by a qualified medical practitioner;

(7) The tree is on a list of tree species of little value as determined by the Board of Managers.

(b) If the Village Manager determines that none of the above conditions apply, the Village Manager shall deny the permit. The Manager is authorized to consult with experts concerning any of the above conditions.

(c) The Board of Managers is authorized to maintain a list of tree species of little value. The aforesaid list may be adopted and amended by resolution.

(No. 19-12-88, 4-18-88; No. 02-01-12, 02-13-12)

Sec. 17-5. Appeals procedures.

(a) Upon the filing of an appeal, the Village Manager shall forthwith transmit [to the Board of Managers] the record pertaining to the appeal to the Tree Ordinance Board. The Tree Ordinance Board shall consist of three (3) members who shall be appointed for three-year staggered terms and two (2) alternate members who shall be appointed for two-year staggered terms. Appointments shall be made by the Chair of the Board of Managers with the concurrence of the Board of Managers. An alternate member may participate in Tree Ordinance Board meetings, but may vote only as a substitute for a Tree Ordinance Board member who is absent. The Chair of the Tree Ordinance Board shall designate which of the alternate members may vote as a substitute for an absent Tree Ordinance Board Member.

(1) The Tree Ordinance Board shall determine if the tree(s) has such outstanding qualities that it should not be removed. If the Tree Ordinance Board finds that the tree is a candidate for removal, the Tree Ordinance Board shall meet with the applicant and/or the applicant's representative within () days of the (filing of an appeal from the) denial of the permit by the Village Manager. The Tree Ordinance Board shall work with the applicant to develop a reforestation plan which, taking into consideration the factors in Section 17-6, the Tree Ordinance Board finds would not adversely affect the public health, safety or welfare, nor the reasonable use of adjoining properties and would not substantially impair the purpose and intent of this Chapter. In developing the reforestation plan, the Tree Ordinance Board will solicit input from residents of adjoining and confronting properties and from the Village Arborist.

(2) If the applicant agrees to a reforestation plan that the Tree Ordinance Board finds meets the standards in sub-section (1) above, the Tree Ordinance Board shall prepare a report to the Board of Managers and the matter will be placed on the consent agenda for approval at the next Board of Managers meeting that is at least ten (10) days after the issuance of the Tree Ordinance Board's report. The matter may be removed from the consent agenda only at the request of two (2) or more members of the Board of Managers.

(3) If the applicant and Tree Ordinance Board do not reach agreement on removal and a reforestation plan within days of the Village Manager's denial of a permit, or such longer period to which the applicant and Tree Ordinance Board agree, the applicant shall either withdraw the application or request that the matter be heard by the Board of Managers in accordance with sub-sections (b) through (f) of this Section 17-5.

(b) If the applicant requests that the matter be heard by the Board of Managers, [T]he Village Manager shall give written notice to the hearing on appeal to the applicant, all abutting property owners and all members of the Village tree committee. Said notice shall be provided to such persons at least ten (10) days prior to the meeting at which the appeal is to be considered. In addition, the property shall be posted with a sign which shall include the case number, nature of the application, and the date, time and place of the hearing. The sign shall be located so as to be readable from the roadway abutting the property and should be placed five (5) feet from the sidewalk, if

one exists, or five (5) feet from the curb or the edge of the paved portion of the street if there is not curb. In the case of lots abutting more than one (1) street, a sign shall be posted for each abutting street.

[(b)](c) For the conduct of any hearing on an appeal pursuant to this section, a quorum shall be not less than four (4) members of the Board of Managers and the decision on appeal shall be approved by a majority of those board members present and voting.

[(c)](d) At the hearing, any party may appear in person or by agent or by attorney. The decision by the Board of Managers shall be made within sixty (60) days following the hearing.

[(d)](e) In exercising its powers, the Board of Managers may affirm the denial of a permit, may direct the Village Manager to issue a permit, or may direct the Manager to issue a permit upon such conditions, terms or restrictions as the Board of Managers may deem necessary in order to make the required findings as set forth in section 17-4(b). If the Board of Managers imposes a reforestation requirement as a condition of approving the removal of one or more trees, the Village Manager may extend the deadline for planting the replacement tree(s), for up to six (6) months, if the Village Manager finds that, due to circumstances beyond the permittee's control, it is impossible or impractical to plant the replacement tree(s) on or before the deadline established by the Board of Managers.

[(e)](f) The secretary of the Board of Managers shall keep minutes of all appeal hearings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official action, all of which shall be filed in the office of the Village Manager and shall be public record.

(No. 19-12-88, 4-18-88; No. 09-01-05, 09-12-05; No. 02-01-12, 02-13-12)

BE IT RESOLVED, that the foregoing ordinance shall take effect on the 28th day of February, 2012, provided the same is posted at the Village Office for fourteen (14) days prior thereto.

Patricia S. Baptiste, Chair
Board of Managers

ATTEST:

Allison W. Shuren, Secretary

DATE: _____

underlining indicates new material.
[brackets] indicate material deleted.
{curly braces} indicate an alternative provision.

